

Committee on Resources, Subcommittee on Forests & Forest Health

[forests](#) - - Rep. Scott McInnis, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6205 - - (202) 225-0691

Witness Statement

Testimony of
William Boyd Howarth
Chairman
Juab County, Utah, Board of Commissioners
to the Subcommittee on Forest and Forest Health
April 25, 2001

Honorable Chairman and committee members: I am Wm. Boyd Howarth Chairman of the Juab County, Utah, Commission. We appreciate the opportunity to represent the residents of Juab County here today and express our strong support of HR451.

HR 451 would remove approximately 429 acres from the Mt. Nebo Wilderness area, add 439 acres to the wilderness area, and make one technical correction. It is important to note that this is a net gain of wilderness acres. This bill is a conservative approach to remove very limited areas from the wilderness in order to allow continued use and maintenance of water systems that date back to the 1800's and to allow access to the existing patented claims in Gardner Canyon. We have checked with local cattlemen, farmers, ranchers, and other public officials. Every one that we have discussed this with agrees that this is a good area to exchange for the water systems and patented mining claims that we have identified.

Let me outline a few of the reasons why this bill is necessary. During the early 1980's, as Forest Service Wilderness was being discussed, the proposals that were presented showed that on Mt. Nebo the western boundary of the wilderness area would be at the 8,000 foot elevation. This was important to protect existing water systems and patented mining claims located below that elevation. Water is the lifeblood of any area. After the Utah Wilderness Act of 1984 was passed, it was discovered that the actual wilderness boundary was, in most cases, brought down to the forest boundary. In some areas it is at the 5,300-foot elevation. With this change, the patented claims and water systems were held hostage within the wilderness. These systems should have never been included in wilderness. Their presence presents significant problems for the owners of the system and it also creates management headaches for the Forest Service. Local Forest Officials have been very positive about trying to resolve these issues.

While the 1964 Wilderness Act provides for recognition of "prior, valid existing rights", and some believe that HR451 is not necessary, over 26 years of experience clearly demonstrates that change is needed. While current law may allow these items to be resolved this certainly has not been the case. On several occasions, congressional intervention and even court action has been required to protect these rights.

This bill would take 7 specific areas out of the wilderness and also clarify the map so there is no misunderstanding that 1 piece of private property is not within the wilderness area. The areas are identified as follows:

1. Monument Springs These springs are a part of the Nephi City Culinary Water System. A pipeline carries water from the springs down to a lower collection system. Approximately 1/8 mile of the pipeline

and the springs are within the wilderness. Nephi plans to do some repair on this system and pipe it down to water the golf course, freeing up softer water from other springs for the regular culinary system. The original wilderness bill does give municipalities some special access rights, however, this small adjustment would prevent many problems. These springs have a priority date of 1937. This parcel contains 26.045 acres

2. Gardner Canyon This canyon provides culinary and irrigation water and has patented mining claims. These springs in Gardner Canyon have a priority date of 1878 and 1855. This parcel contains 202.084 acres. Much of this acreage consists of the patented mining claims that are going to be mined.

3. Birch Creek Water from Birch Creek is used for irrigation on farms located beneath the wilderness. These springs have a priority date of 1850. This parcel contains 4.161 acres. Access is needed to maintain and utilize this water source including the ability to use mechanized equipment when necessary..

4. Ingram Canyon Water from this canyon provides 100% of the culinary water for four (4) homes in the valley. These springs have a priority date of 1923. This parcel contains 17.296 acres.

5. Willow Creek The original water rights in Willow Creek were secured under Utah Law evidenced by Diligence Claim #79. Water was first diverted for use into the Willow Creek Canyon System in the 1870's. Mona Irrigation Company was formed in 1896. Willow Creek South contains 68.156 acres, and Willow Creek North contains 50.38 acres.

6. Mendenhall These springs have a priority date of 1899 and provide irrigation water. This parcel contains 16.350 acres.

7. Wash Canyon These springs have a priority date of 1880. The water from Wash Canyon is used for irrigation on the farmlands. The Forest Service has requested that debris and fragments from a previous line that was installed prior to current ownership be removed. This also requires the use of heavy equipment for which access rights have been denied. This parcel contains 44.302 acres.

8. Dale From the information that we have it appears that the Mt. Nebo Wilderness Area Boundary cuts this private property approximately in half. HR451 would clarify that this private property is not within the wilderness boundary.

Time does not permit me to describe all of the problems that have arisen concerning these valid rights so I will only outline a very few of them.

The owner of the patented claims in Gardner Canyon was driving the existing road to his claims when the Forest Service ticketed him. He also faced significant unwarranted delays and was told that he would not be allowed to mine his claims. Even though research showed use of this road as early as the 1880's, the Forest Service denied Juab County's claim that this was an RS2477 right-of-way. As a result of this the owner filed suit against the Forest Service to maintain his right of access and his right to mine his claims. The settlement required the Forest Service to pay \$120,000 and required that the Forest Service grant him a special user permit that would allow him necessary access and the right to mine those claims. I have attached to my written statement documents verifying the settlement and lack of recognition by the Forest Service of these rights.

Let me briefly tell you the story of Jack Howard. Jack is an 80-year-old man who lives just below Gardner Canyon. He personally has lived at that location, in 2 different homes, for 77 of the last 80 years. For the 3 years that he was absent he was serving in the military. Throughout his entire life (and before that) the culinary water for the family has come from springs in Gardner Canyon as part of the Gardner Canyon Irrigation Company. Maintaining the water system requires cleaning screens located in the canyon. Since wilderness designation, Jack has had to walk the steep up-hill road to clean the screens. This is the same road that can be used to mine the claims, however, at the age of 80 and severely bent over, Jack is still

required to walk the 3/4-mile into the canyon.

During the Utah floods of 1983-84, a large mudslide coved and destroyed the upper portion of the pipeline. The water that flowed through that pipeline now flows through an open ditch. During certain times of the year the water flows through the decaying leaves from the trees and picks up much of this debris that clogs the screens. Jack is required to walk up the road to clean these screens. On washday, Jack and his wife often have to change the filter in their home every 2 hours. The irrigation company has been unable to repair the pipeline because of wilderness designation.

Willow Creek is another prime example that a change is needed. Let me paraphrase from a letter by the President of the Mona Irrigation Company. Mona Irrigation Company owns the rights in Willow Creek. While Mona Irrigation Company's water rights and legal rights to divert and convey water which originated in the Mt. Nebo wilderness are recognized by state law and the 1964 Wilderness Act provides for recognition of "prior, valid existing rights" as a practical matter, bureaucratic delays, lack of response, and down-right untruth proves that this has not been the case.

When the company proposed renovation of structures that protruded into "wilderness", they were met by obstacle after obstacle by the Forest Service bureaucracy. Initially, they were told that work was being done on the required Environmental Assessment. They were told this many times over an 18-month period. They persevered until the fact surfaced that not only was the EA never started, many other crucial facts, such as procedural steps, required comment periods, design requirements, and other pertinent facts had been so misrepresented to them that after 2 years of requesting action, no progress had been made past the initial phase. After the Forest Service was forced to take action due to intervention by Senator Bennett, the Forest Service they continued not only the delay tactics but also sought to interpret the rules in the most stringent way possible. Our engineer finally devised an elaborate design, meant to attempt to meet the requirements. This design used expensive materials, expensive construction methods, and such stringent requirements that when we put the project to bid, the low-cost bid was 4 times the cost the project should have been required, were in not for the wilderness designation of the upper 900 feet.

The final result was that the project took 4 years to get approval, water rights had to be defended against wilderness "advocates" who sought to infringe upon them, the costs were dramatically increased, and the resource was wasted during this inexcusable delay with significant accompanying erosion damage caused by an agency supposedly concerned with protecting the resources and serving the public.

Similar stories could be told of each of the areas that HR451 would remove from wilderness. It is important to remember that while HR451 would remove these areas from wilderness, the areas will still be within the Forest, and the Forest Service has adequate regulations and authority to insure that work that is done in these systems is done in an appropriate and environmentally conscious manner. I strongly encourage your favorable consideration of HR451.

Supplemental Information

Excerpts From A Statement By Gordon Young

President Mona Irrigation Company

While Mona Irrigation Company's water rights and legal rights to divert and convey water which originated in the Mt. Nebo wilderness is recognized by state law and the 1964 Wilderness Act provides for recognition of "prior, valid existing rights" as a practical matter, individual rights of every kind are in jeopardy under "wilderness" or WSA designation when administered by a bureaucracy with an agenda of extremisms, as we see all too often among personnel of all federal agencies.

When the company proposed renovation of structures which protruded into "wilderness" we were met by every obstacle which the forest service bureaucracy could employ. Initially, we were told that work was being done on the required Environmental Assessment. We were told this many times over an 18-month period. We persevered until the fact surfaced that not only was the EA never started, many other crucial facts such as procedural steps, required comment periods, design requirements and other pertinent facts had been so misrepresented to us that after 2 years of requesting bureaucratic action, we had not even progressed past the initial phase. After the forest service was forced to take action due to intervention by Senator Bennett, they continued not only the delay tactics but also sought to interpret the rules in the most stringent way possible. An elaborate design, meant to placate forest service bureaucrats, was devised by our engineer to meet the criteria placed upon us by the forest service. This design used expensive materials, expensive construction methods, and such stringent requirements that when we put the project to bid, the low cost bid was 4 times the cost the project should have been were in not for the wilderness designation of the upper 900 feet.

The final result was that the project took 4 years to get approval through the bureaucratic process, we had to defend our water rights against wilderness "advocates" who sought to have infringed upon them, the costs were dramatically increased and the resource was wasted during this inexcusable delay with accompanying erosion damage caused by an agency supposedly concerned with protecting the resources and serving the public.

Our facilities were included in a designated wilderness area because of several unfortunate circumstances.

First, the need to meet an acreage target regardless of "wilderness" characteristics of the area drove the designation to include areas which are not true wilderness and include many manmade improvements which should have disqualified them for designation.

Second, designation was done with minimal input from users and done under false pretenses as to the true area under consideration and qualifying characteristics of these areas.

Third, blatant disregard as to the rights of users under a bureaucracy which sees any "prior, existing, valid" right as conflicting with "wilderness" values and therefore determined to eliminate such uses.

Gordon Young, President

Mona Irrigation Company

MONA IRRIGATION COMPANY WILLOW CREEK CANYON WATER SYSTEM REBUILD IN THE MT. NEBO WILDERNESS AREA

Sequence of Events:

Original water rights were secured under Utah Law evidenced by Diligence Claim #79

Water was first diverted for use into the Willow Creek Canyon System in 1870's

Mona Irrigation Company was formed in 1896.

Current concrete ditch was constructed 1947-49.

In 1984 the Mt. Nebo Wilderness Act was passed. Valid pre-existing rights were to be protected and reasonable access for maintenance was to be allowed.

Approximately 900 feet of the water system was included inside the wilderness area.

The concrete ditch was worn out in the early 1990's to the extent that the ditch walls were cracking and breaking resulting in uncontrolled water running outside the ditch way.

Some of the worst uncontrolled runoff and water loss was occurring inside the Wilderness Boundaries.

In 1993, Mona Irrigation Company asked the local Forest Service office to start the permitting process that would allow the Company to reconstruct the water system and replace the ditch. The loss of water at the time was at an urgent stage.

The Forest Service promised action. However, nothing was done to move the permitting process forward all through 1993 and 1994.

In late 1994, due to a lack of action and critical need, Mona Irrigation Company went to Senator Bennett's office seeking assistance.

In July, 1995, as a result of Senator Bennett's involvement, an on-site inspection was organized and carried out. Those attending included Forest Service officials, Natural Resource Conservation Service personnel, Utah Congressional Delegation staff, Mona Irrigation Company members, Local Elected officials and Environmental Conservation group representatives.

During the on-site inspection, Forest officials informed that although the Environmental Assessment (EA) was scheduled to be released within 2 weeks, the background work had not even been started nor had any preliminary engineering been started.

As a result of the attention brought on the Forest Service at this time, the EA was finally undertaken and a record of decision to proceed was issued in August 1996.

Mona Irrigation Company immediately put a contract out for bid but received limited interest due to the complicated design and unreasonable restrictions placed by the Forest Service.

Three bids in total were received, all in the \$300,000 to \$400,000 dollar range for a project we knew could be done for under \$100,000.

In the spring of 1997, Mona Irrigation Company undertook the portion of the project outside of wilderness and completed this portion for approximately \$30,000.

In June of 1997, Forest Service officials were asked if Mona Irrigation Company could proceed with the upper 900 feet located within Mt. Nebo Wilderness Boundaries under the existing decision and special use permit with minor changes in design. The changes were in (1) type of pipe - replacement of HDPE with ductile iron (2) placement outside of old ditch instead of being grouted into old ditch (3) minor excavation for access outside of wilderness.

On or about August 22, 1997, local Forest officials contacted Mona Irrigation Company and verbally authorized proceeding under the existing permit as long as all restrictions on wilderness activity were observed.(even disallowing the use of cordless electric drills for example as it was deemed mechanical equipment). No mechanized equipment of any kind was allowed into the Wilderness area. Forest officials imposed that all work be accomplished manually.

On the strength of this verbal authorization, Mona Irrigation Company ordered materials, rented machinery and mobilized to proceed with construction by late September 1997.

On September 3rd, 1997, the local Forest office contacted Mona Irrigation Company and informed that some people thought that it would be better to delay the project, amend the Environmental Assessment and have a

new public comment period. The local Forest office further declared that irregardless of their earlier determination to proceed and irregardless of the previous planning, hardship, waste of time, financial burden and other efforts, was going to comply with some peoples wishes and delay the project and amend the EA. It was clear the some people environmental and wilderness groups interests.

The fact that the local Forest office now denies the earlier verbal authorization that construction would be allowed under the existing permit is amazing, but convenient.

Mona Irrigation Company asked Senator Bennett to intervene and insist that Forest officials allow construction as they had, in fact, verbally authorized under the existing permit, with no further delays and that this lack of concern for and recognition of the pre-existing rights of the citizens of this area and other acts of obstruction cease.

Senator Bennett made inquiries and the project was approved to proceed.

Examples of the Forest Services obstructive tactics

Nephi Cattle Association corrals access _____ cattle guards

Pole Canyon _____ without consulting Juab County.

Gardner Canyon wilderness via Mayor

Road Department issues with culverts

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